

Calendar No. 946

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 91-943

MRS. WANDA MARTENS

JUNE 24, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 783]

The Committee on the Judiciary, to which was referred the bill (S. 783) for the relief of Mrs. Wanda Martens, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to provide that in the administration of the Federal Employees' Compensation Act, as amended, Mrs. Wanda Martens, of Havre, Mont., widow of Jesse Otha Martens, shall be deemed to be entitled to receive payments of benefits and compensation under such act, from and after the death of the said Jesse Otha Martens, in like manner as if the Secretary of Labor had found that the death of the said Jesse Otha Martens on July 9, 1960, resulted from an injury sustained by him while in the performance of his duties as an immigrant inspector, Immigration and Naturalization Service, Department of Justice.

STATEMENT

The Department of Labor opposes the enactment of the bill.
The Department of Justice has advised the committee of the facts in the case as follows:

The decedent, Jesse Otha Martens, suffered a fatal heart attack, after returning home from the performance of his

duties as officer in charge of the Immigration and Naturalization Service office at St. Thomas, Virgin Islands. As indicated by the personnel records of the Service, Mrs. Martens filed a formal claim with the Bureau of Employees' Compensation, Department of Labor, which was considered and initially denied January 7, 1964. On appeal to the Employees' Compensation Appeals Board, this decision was affirmed October 8, 1964, on the ground that the fatal heart attack was not causally related to the employment. The purpose of the bill, therefore, is to overrule the administrative decision.

The Department of Labor in opposing the bill has said:

One of the objectives of the Federal Employees' Compensation Act is to provide uniform and equal treatment of civil employees of the United States injured in the performance of their duty. There appears to be no justification for the preferential treatment afforded by S. 783 for the consequences of heart disease not causally related to employment. Accordingly, we oppose its enactment.

The position of the Department of Labor is set forth well in the opinion of the Employees' Compensation Appeals Board as follows:

U.S. Department of Labor, Employees' Compensation
Appeals Board

In the Matter of Wanda Martens, claiming as widow of Jesse O. Martens, and Department of Justice, Immigration and Naturalization Service, St. Thomas, V.I.

Docket No. 64-272; Hearing June 25, 1964; Issued
October 8, 1964

Appearances: Robert W. Healy, Esq., for appellant; Morton I. Schwartzman, Esq., for the Director, Bureau of Employees' Compensation.

DECISION AND ORDER

Before Theodore M. Schwartz, E. Gerald Lamboley, James A.
Broderick

The issue on appeal is whether the employee's fatal heart attack of July 9, 1960 was causally related to his employment.

The employee was hired as a patrol inspector by the employing establishment on August 1, 1940. Except for about 3 years of military service, he was assigned to Havre, Montana, from 1940 to 1956, and to Helena, Montana from 1956 to 1959. He was transferred to Calais, Maine, in November 1959 in a supervisory position. Because of the illness of the officer in charge at Calais, the employee was responsible for the duties of his own position and those of the officer in charge until June 1, 1960. He was conscientious, capable and a willing worker. During the 7 months he was

assigned to Calais, the employee worked a considerable number of Sundays and holidays, in addition to his regular 40-hour work week. Also, he often arrived early at the office and stayed late without recording the overtime hours worked. The climate in Calais, Me., was similar to that in Montana. Weather Bureau reports show that during June 1960 in Woodland, Maine, which is considered representative of Calais, the average maximum temperature was 76.4 degrees and the average minimum temperature was 51.5 degrees.

Beginning June 15, 1960, the employee was reassigned to Charlotte Amalie, St. Thomas, V.I., as officer in charge. He was responsible for the supervision of all activities on St. Thomas and St. Croix, V.I. There were eight employees under his supervision on St. Thomas and two on St. Croix. All of the employees were experienced except two recently assigned investigators on St. Thomas, who were formerly with the Border Patrol but who had to be trained in the work to be done in the Virgin Islands. Office hours were from 8:30 a.m. to 5:00 p.m., 5 days a week, however, because of a backlog of work and the employee's need to orient himself to the new work, he frequently remained at the office after the regular working hours.

When the employee arrived on St. Thomas, the office was in the process of being remodeled, the patrol boat was not in operating condition, and the two houses which were provided as living quarters for the employee and the two new investigators had not been vacated by their predecessors, making it necessary for them and their families to live in hotels at considerable expense for about 10 days. Thereafter, the employee felt obligated to assist in finding living quarters for one of the investigators, as there was not room for the two investigators and their families in the one-bedroom house available to them. The office building was air conditioned, but the unit in the employee's office was not working properly. The living quarters were not air conditioned.

On July 8, 1960, the employee was required to travel to San Juan, P.R., to receive oral information of a classified nature. After working his regular 8-hour day, he left Charlotte Amalie by airplane at 6:30 p.m. and arrived at San Juan at 6:54 p.m. He attended a conference, which ended at 8:30 p.m. had dinner with several of the conferees, and sat up until about midnight, talking with three other officers. After staying overnight in San Juan, he left for Christiansted, St. Croix, at 8:20 a.m., arriving at 9:07 a.m., to give oral instructions to his staff in Christiansted. He left Christiansted at 11:25 a.m. and arrived at Charlotte Amalie at 11:50 a.m. Weather Bureau records show that the temperature in San Juan, P.R., on July 8, 1960, was 88 degrees maximum and 74 degrees minimum. On July 9, 1960, in St. Thomas, V.I., there was a maximum of 89 degrees and a minimum of 79 degrees.

After he reached home on July 9, the employee complained of exhaustion. He took a nap for about 3 hours, then went

shopping for groceries, took another nap, had a light supper, and went back to bed. He got up to answer five telephone calls between 6:00 and 6:55 p.m. A few minutes later, appellant heard him gasping for breath; by the time she reached him, the employee had died. An autopsy showed an enlarged heart and advanced arteriosclerosis of the coronary arteries, with far advanced atheromatous plaques. The anterior descending branch of the left coronary artery contained a pinpoint lumen which was occluded, partly by subintimal hemorrhage and partly by a fresh thrombus. There was a small scar on the myocardium, probably representing an old infarct. The death certificate showed the cause of death as "thrombosis of anterior descending branch of left coronary artery due to sclerosis of coronary arteries."

Appellant contends that the employee's fatal heart attack was caused by overwork and by the extreme heat which he encountered in the Virgin Islands after working for 20 years along the Canadian border from stations in Montana and Maine.

In support of her claim, appellant submitted reports from Dr. William S. Harper, a specialist in internal medicine, who treated the employee in October 1959 for a duodenal ulcer. He reported that a complete physical examination at that time, which included an electrocardiogram and a chest X-ray, did not disclose any signs of cardiac disease. After learning from appellant of the events preceding the employee's death and the autopsy findings, the doctor stated:

"While coronary heart disease is common to most men, and would certainly have to be considered a preexisting condition in this case, it has been generally held * * * that undue stress, either physical or mental, is often a precipitating factor in a subsequent myocardial infarction."

He expressed the opinion that the circumstances of the employee's death indicated that the heart attack was precipitated by chronic fatigue and exhaustion.

A medical adviser for the Bureau of Employee's Compensation reviewed the case record and stated that the employee had extensive atherosclerotic cardiovascular disease, which is progressive and irreversible in nature. He indicated that there was no evidence of extraordinary activities, either physical or emotional, competent to aggravate the preexisting condition. The doctor stated that in 3 weeks the employee should have become acclimatized to the change in temperature. He pointed out that fatigue is a common complaint in progressive coronary disease. The doctor expressed the opinion that the death of the employee was due to the normal progression of his disease.

The Bureau referred the case record, with a statement of accepted facts, to Dr. Reno R. Porter, a specialist in cardiovascular disease, for review, analysis and opinion as to causal relation between the working conditions and the fatal heart attack. The doctor concluded that there was no relation be-

tween the working conditions and the fatal attack. He described the progressive nature of arteriosclerotic heart disease, pointing out that it is characterized by atheromatous changes in the coronary arteries which develop gradually over a period of many months and years, leading to progressive narrowing of the arterial lumen until the circulation in the involved coronary artery becomes insufficient to supply the heart muscle. He noted that the autopsy findings indicated extensive atheromatous changes in the coronary artery of long standing, existing for years prior to the employee's transfer from the Canadian border to the Virgin Islands, and that the condition, therefore, was not caused by conditions of the employment. The doctor stated that the precipitation of death by the occurrence of a hemorrhage and a thrombus in an already narrowed coronary artery can occur spontaneously as the natural progression of the preexisting disease, or can occur from aggravation of the underlying coronary artery disease by unusual or strenuous physical exertion or acute emotional disturbances. However, he stated that it has not been established that chronic anxiety and worry, long hours and exhaustion are factors which can cause or aggravate underlying coronary artery disease. The doctor discussed studies which have been made on the possible effects of climatic environmental factors on the cardiovascular system. He stated that extremes of temperature appear to be associated with an increased incidence of myocardial infarction; however, he pointed out that in such cases these factors are associated with unusual physical exertion and the infarction occurs immediately after the climatic change and not after a period of acclimatization. The doctor noted that in this case the fatal heart attack occurred more than 3 weeks after the change in climate, by which time there should have been adequate acclimatization, that there was no unusual physical exertion involved, and that the heat was not excessive. He expressed the opinion that there was no casual relation between the climatic environment and the fatal heart attack.

Thereafter, appellant submitted a report from Dr. Donald C. Overy, a specialist in cardiovascular disease, who concurred in the description of the process of coronary artery disease given by Dr. Porter, but expressed the opinion that the environmental factors, including emotional strain, unpleasant living conditions, an unusually heavy workload and a sudden change in temperature and humidity, were sufficiently severe and adequately timed to be influential in the precipitation of the sudden coronary occlusion.

To assist in resolving the conflict in medical opinion, the Bureau referred the case record, with an augmented statement of accepted facts, to Dr. George E. Burch, a specialist in cardiovascular disease who had conducted special studies relating to the effect of climatic conditions on heart disease. After a review of the case record, the doctor concluded that neither the overtime work nor the climate in the Virgin Islands was competent to precipitate the fatal heart attack

or to aggravate the coronary disease in any way. He stated that it is generally accepted that acclimatization is completed within 2 weeks or less and that, in any case, the change in weather could not have produced within 3 weeks the enlarged heart, arteriosclerosis and fibrosis shown by the autopsy. The doctor stated that the record showed the employee to be conscientious and hard working, but that he found no evidence that the overtime work performed by the employee or the climate produced the arteriosclerosis or the ischemic heart disease or contributed in any way to the employee's death.

In a case such as this, the resolution of the question of the relationship between the employee's death and the conditions of employment rests primarily within the realm of the medical expert. The Board finds that the weight of the medical evidence is represented by the opinions of Doctors Reno R. Porter and George E. Burch, which establish that the fatal heart attack on July 9, 1960, was not causally related to the employment.

The compensation order of the Bureau of Employee's Compensation, dated January 7, 1964, is hereby affirmed.

Dated Washington, D.C., October 8, 1964.

THEODORE M. SCHWARTZ,
Chairman.

E. GERALD LAMBOLEY,
Member.

JAMES A. BRODERICK,
Member.

It is the position of the sponsor of the legislation, the Honorable Mike Mansfield, that it is a well-established rule of law that where a compensation case decision is equally balanced on both sides the compensation will be awarded; that since there is no appellate review of the Employees' Compensation Board's decision, this rule has not been extended to provide protection for Federal employees; that it is within the proper jurisdiction of the Congress in its consideration of private relief legislation to rectify any inequities in the application of the law; and that in this case, the claimant has a just and substantial claim.

The committee believes that the bill is meritorious and recommends favorable consideration.

Attached hereto and made a part of this report are (1) a letter from the Department of Justice, dated April 5, 1967; (2) a letter from the Department of Labor, dated April 1, 1969; and (3) a letter from the Honorable Mike Mansfield, dated June 11, 1969.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 5, 1967.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning S. 28, a bill "For the relief of Mrs. Wanda Martens."

The bill provides that in the administration of the Federal Employees' Compensation Act, Mrs. Wanda Martens of Havre, Mont., widow of Jesse Otha Martens, shall be deemed to be entitled to receive payments of benefits and compensation under the act, from and after the death of her husband on July 9, 1960, in like manner as if the Secretary of Labor had found that his death resulted from an injury sustained by him while in the performance of his duties as an immigrant inspector, Immigration and Naturalization Service, Department of Justice. Any amounts payable by reason of enactment of this legislation with respect to any period prior to the date of enactment, would be paid in a lump sum within 60 days after the date of enactment.

The decedent, Jesse Otha Martens, suffered a fatal heart attack, after returning home from the performance of his duties as officer in charge of the Immigration and Naturalization Service office at St. Thomas, Virgin Islands. As indicated by the personnel records of the Service, Mrs. Martens filed a formal claim with the Bureau of Employees' Compensation, Department of Labor, which was considered and initially denied January 7, 1964. On appeal to the Employees' Compensation Appeals Board, this decision was affirmed October 8, 1964, on the ground that the fatal heart attack was not causally related to the employment. The purpose of the bill, therefore, is to overrule the administrative decision.

Since the administration of the Employee's Compensation Fund is within the jurisdiction of the Secretary of Labor, we defer to the Department of Labor as to whether this legislation should be enacted.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

_____, _____,
Attorney General.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, April 1, 1969.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your request for a report on S. 783, a private bill "For the relief of Mrs. Wanda Martens."

This bill would provide in effect that, for purposes of the Federal Employees' Compensation Act, Jesse Otha Martens, deceased husband of Wanda Martens, died on July 9, 1960, from injuries sustained while in the performance of his duties as an Immigration Inspector of the Immigration and Naturalization Service, thereby entitling Mrs. Martens to benefits and compensation under the act. It further provides for a lump sum retroactive payment within 60 days after the date of enactment of this bill.

A review of the record in the case of Mrs. Martens discloses that her husband's death was caused by advanced arteriosclerosis which was unrelated to his employment.

One of the objectives of the Federal Employees' Compensation Act is to provide uniform and equal treatment of civil employees of the United States injured in the performance of their duty. There appears to be no justification for the preferential treatment afforded by S. 783 for the consequences of heart disease not causally related to employment. Accordingly, we oppose its enactment.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, D.C., June 11, 1969.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate.

DEAR MR. CHAIRMAN: Your staff has provided me with a copy of the Department of Labor's long overdue report on my private relief bill, S. 783, which would benefit Mrs. Wanda Martens.

Despite the adverse recommendations of the Department, it is my sincere hope that the committee will be able to pass this legislation.

I believe that Mrs. Martens' case is meritorious. It seems to me that the Department officials have adopted the views of their own medical experts as opposed to the opinion of competent personal physicians to the Martens family. I realize that these cases are difficult to judge but in this instance I believe that Mrs. Martens' claim is justified.

Your cooperation is most appreciated.

With best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

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